IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIE MARCHMAN	:	
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	:	
V.	:	05-CV-4762
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	:	
RONALD NARDOLILLO,	:	
GEO MEDICAL STAFF, ET AL;	:	
DR. RALPH SMITH, MS. TERESA	:	
KESTELOOT, MS. SHARON ROSE	:	

RUFE, J. January 30, 2006

MEMORANDUM OPINION AND ORDER

Willie Marchman ("Marchman"), an inmate in state custody at the George W. Hill Correctional Facility, brought this civil rights claim pursuant to 42 U.S.C. § 1983 alleging constitutionally inadequate medical care for injuries he sustained. Presently before the court is a motion to dismiss filed by defendants

Ronald Nardolillo and Ralph Smith. For the reasons that follow, the motion is granted and the Complaint dismissed against these defendants with prejudice.[1]

I. Factual Background[2]

Marchman, a diabetic, claims that on June 3, 2005, at approximately 4:15 a.m., he reported to the prison medical unit to have his blood sugar level tested. While leaving the unit, he slipped and fell on a wet floor, injuring his back, neck and shoulder. He was issued a neck brace and kept at the medical unit for observation for twenty-eight hours. His blood pressure and temperature were monitored and his injuries were x-rayed. He was given a prescription for Tylenol 3, a narcotic pain reliever. He requested that photos be taken of his bruises, but his request was denied. On July 1, 2005, he began filing grievances in an attempt to have a video tape of his fall preserved, to find out what the x-rays determined, and to have his prescription for Tylenol 3 renewed.

[1]Service was returned unexecuted on the other defendants named in the complaint. We will dismiss the remained of the complaint without prejudice and with leave to reinstate should Marchman make service on the other named defendants.

[2]Unless otherwise specified, the Court's statement of the facts is taken from Part V. of Marchman's Complaint.

Marchman's claim against Dr. Smith arises from the doctor's denial of plaintiff's request's for physical therapy and for additional narcotic pain medication. Marchman avers that Dr. Smith told him he could purchase non-prescription pain medication at the prison commissary.[3] Marchman has also sued Warden Nardolillo, claiming that: (1) he is responsible for Marchman's fall because he failed to instruct employees in regards to safety measures; and (2) he failed to reply to Marchman's grievances.[4]

II Standard of Review.

In considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom. A motion to dismiss may only be granted where the allegations fail to state any claim upon which relief may be granted. The Court primarily considers the allegations of the complaint, but it may also consider a document integral to, attached to, or explicitly relied upon

[3]Addendum to Marchman's Complaint at p. 1 ¶¶ 1, 4.

[4]Addendum to Marchman's Complaint at p. 1 ¶ 2.

in the complaint. Dismissal is warranted if it is certain that no relief can be granted under any set of facts which could be proved.[5]

III Discussion

In order to state a claim that his medical treatment during incarceration violated his Eighth Amendment rights, Marchman must allege "facts or omissions sufficiently harmful to evidence deliberate indifference to [his] serious medical needs."[6] The Third Circuit has stated:

> [T]his test affords considerable latitude to prison medical authorities in the diagnosis and treatment of medical problems of inmate patients. Courts will disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment . . . [which] remains a question of sound professional judgment. Implicit in this deference to prison medical authorities is the assumption that such informed judgment has, in fact, been made.[7]

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[5]See Brody v. Hankin, 299 F.Supp.2d 454, 457-58 (E.D.Pa.2004) (outlining standard of review for motion to dismiss pursuant to Rule 12(b)(6)). See also, Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir.1997) ("[W]hile the pleading standard is a liberal one, bald assertions and conclusions of law will not suffice.") (internal quotations omitted).

[6]Estelle v. Gamble, 429 U.S. 97, 106 (1976).

[7]Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979) (internal quotations and citations omitted).

However, "where knowledge of the need for medical care is accompanied by the intentional refusal to provide that care, the deliberate indifference standard has been met."[8]

The United States Supreme Court has defined "deliberate indifference" as subjective recklessness, or a conscious disregard of substantial risk of serious harm.[9] If a defendant knows of a substantial risk to a plaintiff's health and consciously disregards it, he is being deliberately indifferent; however, a complaint that a physician "has been [merely] negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment."[10]

As Marchman concedes that he received significant medical treatment for his injury, the deliberate indifference standard has not been pled as a matter of law. Marchman was treated almost immediately after the slip and fall in the medical unit, observed for twenty-eight hours, and given narcotic pain medication before he was discharged. The medical request forms Marchman appended to the complaint indicate he was seen on a periodic basis for follow up care as late as the end of

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[8]Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987) (internal quotations and citations omitted).

[9]Farmer v. Brennan, 511 U.S. 825, 839 (1994).

[10]Estelle, 429 U.S. at 106.

August, 2005. He was advised that if he still had medical problems he should submit a sick call request. As of September 9, 2005 he was apparently still receiving pain medication since he made reference to "medication that I am now receiving."[11] Accordingly, Plaintiff's claim does not rise to the level of a constitutional violation against Dr. Smith.

The claim against Warden Nardolillo also fails to state a constitutional claim. Insofar as Marchman attempts to state a due process claim that the Warden failed to respond to his grievances, "a prisoner has a liberty interest only in "freedom[s] from restraint . . . impos[ing] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.'"[12] Marchman does not have a federally protected liberty interest in having grievances resolved to his

[11]Medical Request Form dated September 9, 2005.

[12]Geiger v. Jowers, 404 F.3d 371, 373-74 (5th Cir. 2005) (quoting Sandin v. Connor, 515 U.S. 472, 484 (1995).

satisfaction.[13] As he relies on a legally nonexistent interest, any alleged due process violation arising from the alleged failure to review his grievances is meritless.

To the the extent that the claim against Nardolillo is based on his failure to instruct employees concerning safety measures, such as putting "wet floor" signs around spills, this allegation cannot prevail since negligence does not rise to the level of a constitutional violation.[14]

For these reasons, Defendants' motion to dismiss the complaint is granted. An appropriate Order follows.

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[13] Geiger, 404 F.3d at 374; Shorter v. Lawson, ___ F.Supp.2d ___, 2005 WL 3311462 (N.D.Ill. 2005) (that a jail official ignores or denies a prisoner's grievance does not violate the Fourteenth Amendment's due process clause); Wilson v. Vannatta, 291 F.Supp.2d 811, 819 (N.D.Ind.2003) ("prison official ignoring grievance is not a constitutional violation; "[t]he right to petition the government for grievances does not guarantee a favorable response, or indeed any response, from government officials").

[14] See Daniels v. Williams, 474 U.S. 327, 328 (1986) (it is well-settled that the protections afforded prisoners by the Due Process Clause are not triggered by the simple negligence of prison officials).

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ORDER

And now, this Thirtieth day of January, 2006, having considered the motion of Ronald Nardolillo and Ralph Smith to dismiss the complaint of Willie Marchman, it is hereby ORDERED that the motion is GRANTED.

The complaint of Willie Marchman is DISMISSED with prejudice as to defendants Ronald Nardolillo and Ralph Smith.

The complaint of Willie Marchman is DISMISSED without prejudice as to all other defendants with leave to reinstate should plaintiff effect service of process.

The Clerk is DIRECTED to mark this case CLOSED.

IT IS SO ORDERED.

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CYNTHIA RUFE